

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 500 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJANKUMAR HARILAL HALLAN

Versus

STATE OF GUJARAT

Appearance:

MR JD AJMERA for Petitioner
MR AD OZA GOVERNMENT PLEADER Respondent No. 1 & 2.
MR PS CHAMPANERI, for respondent Nos.3/1 to 3/4
PARTY-IN-PERSON for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/09/2000

ORAL JUDGEMENT

The present Civil Revision Application has been
filed against the order dated 1-4-2000, passed by the
learned Civil Judge (S.D.), Dhrangadhra, below Exh.144

in Regular Civil Suit No. 12 of 1998, whereby he allowed application Exh.144 submitted by the respondent Nos. 3/1 to 3/5 under Order 26 Rule 9 of C.P.C. for appointment of the commissioner for the purpose of carrying out the panchnama of the property in question.

2. I have heard Mr. J.D.Ajmera, learned advocate for the petitioner, Mr. A.D.Oza, learned Government Pleader for respondent Nos. 1 and 2, Mr. P.S.Champaneri, learned advocate for the respondent Nos. 3/1 to 3/4 and party-in person, Mr. Pandya Chandrakant Maganlal, respondent No.3/5.

3. Learned advocate for the petitioner Mr. J.D.Ajmera has relied upon the decisions reported in A.I.R. 1989 Orissa 118 Basanta Kumar Swain v. Baidya Kumar Parida and others and 1999 (2) CCC 119 (Raj.) Union of India & Anr. v. M/s. Kirpal Industries Raisingh Nagar and argued that the order passed by the Court below allowing application Exh.144 is not legal and valid because while passing the order the Court below has directed the Commissioner to ascertain that who is in possession of the property in question and the said question does not fall under Order 26 Rule 9 of the C.P.C. He has also argued that the party should not be permitted to use Court machinery for the purpose of collecting evidence.

4. On the other hand, Mr. P.S.Champaneri, learned advocate for the respondent Nos. 3/1 to 3/4 and respondent No.3/5 who appeared in person has argued that the order passed by the Court below regarding appointment of Commissioner is just and legal and it was necessary for the purpose of deciding the dispute between the parties. There cannot be any doubt that the Court is empowered to appoint Commissioner for local investigation in a suit under Order 26 Rule 9 of the C.P.C., if he deems fit and proper a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute. Here in this case also the Court below after coming to the conclusion as aforesaid has passed the order and appointed the Commissioner, but while doing so, he has cast the liability upon the Commissioner to ascertain that who is in possession of the disputed land which cannot be done by the Commissioner. In view of the facts and circumstances of the case, I am of the view that party should not be permitted to use Court machinery for the purpose of collecting evidence. Therefore, the above part of the order passed by the Court below casting liability upon the Commissioner to ascertain that who is in possession

of the disputed land is not sustainable in law and the said part of the order passed by the Court below is required to be quashed and set aside.

5. For the foregoing reasons, this Civil Revision Application is partly allowed. The order dated 1-4-2000, passed by the learned Civil Judge, (S.D.), Dhrangadhra below Exh.144 in Civil Suit No.12 of 1998 directing the Commissioner to ascertain that who is in possession of the disputed land is hereby quashed and set aside. Rest of the order passed by the Court below regarding only making panchnama shall remain in operation. Rule made absolute to the aforesaid extent.

(R.P.Dholakia, J.)

* mithabhai